

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
ADMINISTRATION CENTER RM. AC 255/259
THURSDAY, OCTOBER 16, 2008, 2:00 P.M.**

CALL TO ORDER

Pat Haukohl, Chairperson, called the meeting to order at 2:00 p.m.

Commission

Members Present:	Pat Haukohl	Jim Siepmann	Bonnie Morris
	Walter Kolb	Bill Mitchell	

Commission

Members Absent:	Bob Peregrine	Gary Goodchild
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Staff

Members Present:	Richard L. Mace, Planning and Zoning Division Manager
	Elfriede Sprague, Clerk III

Guests Present:	Dick Garbe	Kathy Garbe	Scott Wood
	Gary Witt	John McCarthy	Ed Muzik
	Daniel Gotter	David Ashley	Fouad Saab

CORRESPONDENCE:

None

MEETING APPROVAL:

None

MINUTES:

None

PUBLIC COMMENT

Chairperson Haukohl asked if anyone from the audience wished to address the Commission?

Gary Witt, W331 N5365 Cherry Ct., Nashotah, WI addressed the Commission regarding the location of the new proposed dog exercise area in Nashotah Park. He stated he has visited Minooka Parks' dog exercise area and there was a lot of barking, dog training involving whistles and general noise. As the proposed site would abut a residential area, especially his back yard, he urged the County to reconsider relocating it to another area of Nashotah Park that would not be near a residential area. In addition, the proposed location is in a kettle and the noise echoes. He suggested several alternative sites where noise would not be such a problem and their advantages.

With no other public comment, she moved to the next item on the agenda.

- **ZT-1683 (Text Amendment) Town of Delafield**

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He stated the request is to amend various sections of Chapter 17 of the Town of Delafield Code of Ordinances.

Mr. Mace stated the proposed amendments include definitions of various items which in some cases where not identified a number of years ago. They include hot tubs, open cell pavers, which are used to reduce the imperviousness of ground surfaces, open space, service pedestals, which are being used more often, and utility structures. Amendments were made to several sections of the Ordinance, including setbacks, offsets, open space, walks and driveways serving a single lot and swimming pool provisions, which will now apply to hot tubs as well, except that in lieu of fencing, a latched cover over the tub must be provided.

Mr. Siepmann added a compelling reason for the addition of a definition of open cell pavers is the Town of Delafield has a very restrictive impervious surface requirement. It is extremely difficult to meet in cluster type developments, because it is as restrictive, on a percentage basis on a smaller lot as a larger lot. It allows some relief for a large structure on a small lot to be able to meet the requirements.

After discussion, Mrs. Morris moved, seconded by Mr. Kolb and carried unanimously for approval, in accordance with the “Staff Report and Recommendation”.

- **SZT-1678 (Siepmann Family Properties) Town of Summit, Section 23 (A-2 Rural Home District and the AD-10 Agricultural Density-10 District to the R-1 Residential District with lands zoned C-1 Conservancy District to remain unchanged (County Shoreland) and from the A-2 Agricultural District-2 to the R-1 Estate Residential District (Town))**

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property in the NW ¼ of Section 23, Town of Summit on the aerial photograph.

Mr. Siepmann recused himself from the Commission and presented himself as the petitioner. Mr. Mace gave a brief history of the property and stated the proposed Certified Survey Map (CSM) was created to accommodate new lot line reconfigurations due to some land swapping between three owners. Mr. Siepmann presented an exhibit showing the proposed land division and usage. He stated proposed Lot 4 (on the west side of N. Timber Trail Ln.) is configured to allow for a future 4-lot addition to the Brightwater Subdivision. Lot 3 contains his residence and will remain in his ownership. When the four lots in the Brightwater Addition are developed, N. Timber Trail Ln., which is currently a private street, will be realigned and become a public road servicing the Redemptorist Retreat Center and two other residences to the south. The lands to the east of N. Timber Trail Ln. and to the west of proposed Lots 3 and 4 are currently zoned R-1. When he added a portion of lands to his lot (Lot 3), he ended up with an R-1 zoning on part of this lot and an Agricultural zoning on the other part. The Town has requested the parcel be rezoned to the R-1 Residential District to be consistent with the surrounding lands and to eliminate multiple zoning categories on one parcel. The rezoning of the proposed Brightwater Addition is included in this request, as future development would require it to be in the R-1 Residential District.

Mrs. Haukohl questioned whether there was a Maintenance Agreement for the use of N. Timber Trail Ln. for all the existing neighboring properties? Mr. Siepmann replied he has a private Maintenance Agreement with all of the property owners along N. Timber Trail Ln., which addresses maintenance and ownership of the road. It is a requirement of the CSM and the Town rezoning that there be one.

Mr. Mitchell moved, seconded by Mr. Kolb, and carried with 4 yes votes (Mr. Siepmann recused himself) for approval, as conditioned, in accordance with the “Staff Report and Recommendation”.

• SZT-1664A (Hope Evangelical Lutheran Church) Town of Summit, Section 21 (A-P Agricultural Land Preservation District to the A-5 Mini Farm District(County Shoreland) and from the A-1 Agricultural District-1 to the A-2 Agricultural District-2(Town Zoning))

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property in the SE ¼ of Section 21, at approximately 1335 N. Dousman Rd. in the Town of Summit on the aerial photograph.

Mr. Mace stated the proposed rezoning is to facilitate a division of a 62-acre parcel. The southern 28 acres (proposed Lot 2) would be acquired by Hope Evangelical Lutheran Church for a future church site, while the northerly portion (proposed Lot 1) will be retained by the current owners, the Erdmann’s. The current zoning designation by both the Town and the County requires a minimum parcel size of 35 acres. To accommodate the division, the property needs to be rezoned to accommodate the 2 lots that will be less than 35 acres. The County’s A-5 zoning designation would allow for a five-acre minimum lot size and the Town’s A-2 designation allows for a 10-acre density. Mrs. Haukohl noted the parcel is currently zoned Ag Preservation and there would be a loss of agricultural zoned lands. Mrs. Morris replied there is development all around the parcel. Mr. Siepmann added the rezoning meets the Master Plan for both the Town and the County. She noted a nearby resident expressed concern about standing water on the property. Mr. Siepmann explained there is a small area of standing water from the June flooding along Dousman Rd. The neighbor was impacted by the flooding and was concerned about stormwater detention basins adding more ground water to an already saturated area. He asked the Town to be sensitive to stormwater management when the project goes forward. The Town felt that the County’s Stormwater and Erosion Control Ordinance would address any issues.

Mr. Dan Gotter, president of Hope Evangelical Lutheran Church, gave an overview of the church’s proposal. He explained the church has a contract to purchase the southern acreage of the parcel from the Erdmann’s. They are a small mission congregation and it will be years before they will be able to construct a church on the parcel. The intent is to continue to rent out the agricultural land until construction can commence. They intend to raze the house, barn and all the outbuildings except for one approximately 24’ x 45’ shed that is in serviceable condition. He knows that if they are to keep the shed and destroy the house, a Letter of Credit equal to the cost of the removal of the structure plus 15% is required and the church is willing to do that. Mr. Mitchell commented they would need to get a variance first. Mr. Mace replied a variance is not needed if we have a Letter of Credit. Mr. Siepmann added the shed is allowed in the Town in the A-2 zoning, just not the County. Mrs. Haukohl stated she would like to see it included as a condition. Mr. Gotter stated everything in the Staff Report and Recommendation and the Town Ordinance is agreeable to the church and they are working with Mark Powers to incorporate the requirements into the CSM. He would like to point out in Condition I that the request is subject to the church successfully closing with the Erdmann’s. The church’s financing is in place and they intend to close within 30 days if the request is approved by the County.

Mrs. Morris moved, seconded by Mr. Mitchell, and carried unanimously for approval, as conditioned by the Town and in accordance with the “Staff Report and Recommendation” with the added condition that:.

- *The shed be allowed to remain on the property so long as a Letter of Credit equal to the cost of the removal of the structure plus 15% is provided to the Waukesha County Planning and Zoning Division.*

• **SCZ-1679 (Town of Oconomowoc) Sections 19 and 20, (P-I Public and Institutional District to the A-P Agricultural Land Preservation District)**

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property in the NE ¼ and NW ¼ of Sections 19 and 20, Town of Oconomowoc.

Mr. Mace stated the lands are being removed from the P-I District, as they are not being used for the Hwy. 16/67 bypass project, which was the intended purpose for the zoning category. The Town is proposing to rezone the lands to the Agricultural District because they are interested in protecting the lands from development, continuing to farm this land and improve the water quality of Lac La Belle Lake. They have no intention at this time to provide for residential, commercial or industrial development. In the future, portions of the lands may be used for a park or municipal services, such as a recycling center.

After discussion, Mr. Mitchell moved, seconded by Mr. Kolb and carried unanimously for approval, in accordance with the “Staff Report and Recommendation.”

• **SCU-1354D (Dr. Syed Hussain) Town of Delafield, Section 15**

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property on the north side of Maple Avenue in the SE ¼ of Section 15, Town of Delafield, on the aerial photograph and stated the petitioner is requesting to amend his existing Conditional Use.

Mr. Mace explained that when Dr. Hussain purchased several properties for the development of his condominium project, he acquired a deeded lake access right that originally belonged to Lot 8, Block A, of the plat of Addition to Crystal Springs Park. A CSM is being required to merge the existing lots of record into one ten-acre parcel for the condo project. At one of the public hearings, this lake access right was represented as being transferred to Dr. Hussain’s personal residence. However, the Waukesha County Corporation Counsel and Mr. Hussain’s attorney have indicated it is inappropriate to attach the lake access rights to the petitioner’s residential property and not the condominium unit (Unit 1), which is to be built in the approximate Lot 8 location. It was determined a new public hearing would have to be held to make sure the residents in the neighborhood understood how that right would transfer from Dr. Hussain’s private residence to Unit 1 of the condominiums. Several other property owners share this lake access as a common right-of-way and there was concern at the public hearing that all 13 condo units would have the use of it. The County responded it would not be allowed as this would be pyramiding. To ensure pyramiding does not happen, the Condominium Declaration of Restrictions have been revised in Section R to state that the right is being assigned to Unit 1, and only Unit 1, and cannot be of benefit to any other unit owner or the common area owners in the Maple Bluff Estates Condominium development.

Mrs. Haukohl asked if Unit 1 would be a single unit? Mr. Fouad Saab, Dr. Hussain’s architect, replied it was. He added no one from the other 12 condominium units would be able to use the lake access. It is clearly defined in the Condominium Declaration of Restrictions.

After discussion, Mr. Kolb moved, seconded by Mrs. Morris, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **CU-1465 (Richard Garbe) Town of Genesee, Section 14**

Mr. Mace presented the “Staff Report and Recommendation” dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property at W297 S3206 Boettcher Rd., Town of Genesee on the aerial photograph and stated the petitioner is requesting after-the-fact approval of earth-altering activities in conjunction with the construction of a pond and ditch. (Matter referred back to the Town of Genesee Plan Commission at the Sept. 4, 2008 meeting).

Mr. Mace stated that on September 4, 2008, the Waukesha County Park and Planning Commission considered a request by Mr. Garbe for after-the-fact approval of earth-altering activities in conjunction with the construction of a pond and ditch on his property. The Town of Genesee Plan Commission approved this matter at their meeting on July 28, 2008. The Waukesha County Park and Planning Commission agreed with all of the Town’s conditions except Condition No. 12 that required the petitioner to pay forfeiture to the Town of Genesee of \$1,000.00. The Town was notified that the Waukesha County Corporation Counsel, the Park and Planning Commission and the staff felt that requiring the payment of a forfeiture to the Town of Genesee, as a condition of approval, was inappropriate as this conditional use is regulated under the Waukesha County Zoning Code and forfeitures are assigned by the court. Therefore, the matter was referred back to the Town of Genesee Plan Commission to reconsider Condition No. 12.

At their meeting on October 13, 2008, the Town of Genesee Plan Commission agreed to change Condition No. 12 of their approval to state: “Subject to Waukesha County imposing a fine and or penalty.....”. The Staff feels this is an appropriate change. Mr. Garbe commented there are many instances in the County when things are blatantly done and no fines are imposed; however, he stepped forward himself when he found out he needed permits to create the pond. When he bought the property, he was not made aware he would need any permits and there were no wetlands. The wetlands were not determined until he paid for the delineation himself. He asked what the fine would be. Mr. Mitchell replied the Commission has expressed to Staff how they feel regarding the fine. It is felt that because he came forward himself and tried to do the right thing, if there is a citation issued, Staff will take into consideration after-the-fact application fees have been paid and the Garbe’s willingness to work with the County. Mr. Mace replied The Garbe’s have been completely co-operative and this will be taken into account when establishing an amount. The fine will be determined later.

After discussion, Mr. Mitchell moved, seconded by Mrs. Morris, and carried unanimously for approval, as conditioned, in accordance with the “Staff Report and Recommendation” with Condition No. 12 modified to read:

12. Subject to Waukesha County imposing a fine and/or penalty on the petitioner for commencing earth altering activities prior to obtaining proper permits. In the event the conditions of this permit are not satisfied, additional forfeitures, penalties and other remedies may apply and Waukesha County specifically reserves the right to pursue all enforcement options with regard to all past, present and future violations of the Waukesha County Zoning Code, in this regard. In addition, Waukesha County may seek input from the Town of Genesee prior to imposing said fines and/or permits.

The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

- **CU-1489 (David Ashley) Town of Ottawa, Section 19**

Mr. Mace presented the "Staff Report and Recommendation" dated October 16, 2008, and made a part of these Minutes. He pointed out the location of the property at S46 W39084 C.T.H. "ZC", Town of Ottawa on the aerial photograph and stated the petitioner is requesting a conditional use to allow after-the-fact truck parking. Mr. Mace stated the Town has denied Mr. Ashley's request therefore the County must comply with their decision and deny it also.

After a brief discussion, Mr. Mitchell moved, seconded by Mr. Siepmann, and carried unanimously for denial, in accordance with the "Staff Report and Recommendation".

- **SCU-1432 (DNR- Lapham Peak Snowmaking Operation Annual Report) Town of Delafield, Section 29**

Mr. Mace indicated that a condition of SCU-1432 required an annual report summarizing the pond and well monitoring must be submitted to the Waukesha County Planning and Zoning Division Staff through 2009, for the Commission's review and to see if there was any negative impacts on groundwater in the area. The monitoring included observing the water levels in the pond and the nearby wetlands. Mrs. Haukohl questioned what would happen after the 2009 report is submitted? She would like to see a periodic report submitted monitoring the effect of the snowmaking operations on the wells and the marsh. Mr. Ed Muzik, DNR, replied it would not be difficult as records are kept and there is a meter in the well. The operation is monitored for usage and best practices. However, there is a very small staff and creating a large report may be difficult. Mrs. Haukohl replied it would not have to be as detailed as the submitted reports, just a summarization of the well and pond levels and any effects on the wetlands. She felt it would be a good idea to continue to receive a "brief report periodically". Mrs. Morris questioned what she meant by periodically. Chairperson Haukohl replied, "Every couple of years, just to let us know what is going on".

After discussion, Mr. Siepmann moved, seconded by Mr. Kolb, and carried unanimously to accept the 2008 report as presented.

ADJOURNMENT

With no further business to come before the Commission, Mr. Siepmann moved, seconded by Mr. Morris to adjourn at 3:30 p.m.

Respectfully submitted,

Bonnie Morris
Secretary

BM:es